

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

DANIEL DUANE MARTIN,

Petitioner,

v.

Case No. 2:12-cv-111
HON. R. ALLAN EDGAR

MITCH PERRY,

Respondent.

MEMORANDUM AND ORDER

Petitioner Daniel Duane Martin, a Michigan state prisoner in the custody of the Michigan Department of Corrections, filed a *pro se* petition for writ of habeas corpus under 28 U.S.C. § 2254. The case was referred to Magistrate Judge Timothy P. Greeley for a report and recommendation.

On March 16, 2012, Magistrate Judge Greeley submitted his report recommending that the habeas petition be denied and dismissed with prejudice on the ground that it is time-barred by the one-year statute of limitation in 28 U.S.C. § 2244(d)(1). [Court Doc. No. 4]. It is further recommended that a certificate of appealability be denied under 28 U.S.C. § 2253(c)(2). Petitioner Martin has not timely filed an objection to the report and recommendation.

After reviewing the record, the Court **ACCEPTS and ADOPTS** the report and recommendation pursuant to 28 U.S.C. § 636(b)(1) and W.D. Mich. LCivR 72.3(b). The Court concludes that the petition for writ of habeas corpus brought under 28 U.S.C. § 2254 shall be **DENIED and DISMISSED WITH PREJUDICE** on the ground that it is time-barred by the one-

year statute of limitation in 28 U.S.C. § 2244(d)(1).

If petitioner Martin files a notice of appeal, it will be treated as an application for a certificate of appealability which shall be **DENIED** pursuant to 28 U.S.C. § 2253(c)(2); Fed. R. App. P. 22(b)(1); and *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) for the same reasons expressed in the report and recommendation. Reasonable jurists could not find it debatable whether the habeas petition has been properly dismissed on the ground that it is time-barred the statute of limitation in 28 U.S.C. § 2244(d)(1).

A separate judgment will enter.

SO ORDERED.

Dated: April 10, 2012.

/s/ *R. Allan Edgar*

R. ALLAN EDGAR

UNITED STATES DISTRICT JUDGE